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OFFICE OF PETITIONS

In re Application of
Ferraro et al.
Application No. 10/796,601
Filed: March 9, 2004
Attorney Docket No. 129-3-CON

Decision on Petition

This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 11, 2005, to accept the unintentionally delayed priority claim set forth in the concurrently filed amendment.

The petition is **granted**.

When an application is filed on or after November 29, 2000, benefit claims under 35 U.S.C. 119(e), 120, 121 and 365(c) must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. For the instant application, the above period of time ended on July 9, 2004. The priority claim at issue was not made by this date. However, petitioner has submitted a petition under 37 CFR 1.78(a)(3) which allows one to make late priority claims if certain criteria are satisfied.

Per 37 CFR 1.78(a)(3), a petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:


- (1) The reference required by 37 CFR 1.78(a)(2), unless previously submitted;
- (2) The surcharge set forth in § 1.17(t); and
- (3) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner has satisfied the requirements listed above.

The granting of this petition is not a determination that petitioner is actually entitled to the benefit of the filing date of the prior-filed application, but is only a determination that the Office will allow petitioner to file an untimely claim for priority. The examiner will, in due course, consider the priority claim and determine the extent to which the application is entitled to an earlier filing date.

A corrected Filing Receipt, which includes the priority claim, accompanies this decision on petition.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


Frances Hicks
Petitions Examiner
Office of Petitions

Attached: Corrected Filing Receipt